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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK STOYAS, NEW ENGLAND) Case No. 2:15-cv-04194 DDP-JC
TEAMSTERS & TRUCKING INDUSTRY)
PENSION FUND, and AUTOMOTIVE) **ORDER DENYING PLAINTIFFS'**
INDUSTRIES PENSION TRUST FUND,) **MOTION [220] TO EXCLUDE**
individually and on behalf of all others)
similarly situated, a Japanese Corporation)
)
Plaintiffs,)
)
v.)
)
TOSHIBA CORPORATION, a Japanese)
Corporation,)
)
Defendants.)

1 Presently before the court is Plaintiff's Motion to Exclude the Expert Opinions of
2 Masao Yanaga and Hidefusa Iida. Dkt. 173. Having considered the parties' submissions,
3 the court DENIES the motion and adopts the following order.

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5 **I. BACKGROUND**

6 Automotive Industries Pension Trust Fund and New England Teamsters &
7 Trucking Industry Pension Fund ("Plaintiffs") bring this Motion to Exclude the Expert
8 Opinions of Masao Yanaga and Hidefusa Iida in connection with Toshiba Corporation
9 ("Defendant")'s pending Motion for Summary Judgment. The facts of this action have
10 been set forth in previous orders. *See* Dkt. 65, 79, 148.

11 Previously, Defendant opposed Plaintiffs' Motion for Class Certification on
12 several bases, including that Plaintiffs (1) lacked standing, and (2) excluded potentially
13 valuable claims of putative class members who would not have purchased securities but
14 for Defendant's alleged misrepresentations. Defendants included in their Opposition the
15 declarations of Iida and Yanaga. The court ordered further briefing on the matter at the
16 summary judgment stage. Dkt. 147. In particular, the court ordered both parties to
17 address:

- 18 1) whether Plaintiffs have statutory standing to bring claims under the Financial
19 Instruments & Exchange Act of Japan ("JFIEA"); and
20 2) whether any of the proposed class members' claims under the JFIEA require a
21 showing of damages based on the acquisition of shares.

22 Dkt. 147.

23 In support of the ensuing motion for summary judgment, Defendant resubmitted
24 the above-mentioned declarations of Iida and Yanaga, which were originally submitted
25 to oppose class certification. Dkt. 151. Plaintiffs then moved to exclude the declarations of
26 both experts under the arguments discussed below. Dkt. 222.

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1 **II. LEGAL STANDARD**

2 Under Rule 44.1, courts may consider any relevant material or source that may aid
 3 them in determining foreign law. Fed. R. Civ. P. 44.1. A determination of foreign law
 4 based on Rule 44.1 is treated as a ruling on a question of law, and the materials
 5 considered need not be otherwise admissible under the Federal Rules of Evidence.
 6 Accordingly, experts considered under Rule 44.1 need not meet the standards of in
 7 Federal Rule of Evidence 702, as applied in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S.
 8 579 (1993). See *Schultz v. Royal Caribbean Cruises, Ltd.*, No. 18-24023-CIV, 2020 WL
 9 3035234, at *4 (S.D. Fla. June 5, 2020).

10 **III. DISCUSSION**

11 Plaintiffs argue that Iida and Yanaga's declarations "run afoul of Rule 44.1"
 12 because they are not relevant, not supported, not reliable, and improperly opine on
 13 ultimate facts. Mot. at 2, 10, 15.

14 **A. Payment**

15 As a threshold matter applying to both Yanaga and Iida, Plaintiffs argue that
 16 Defendant improperly paid Yanaga and Iida after they wrote their declarations. Plaintiff
 17 reasons that "[t]his payment structure creates an undue and direct incentive to align the
 18 expert's views with Toshiba's." Mot. at 19. The court does not weigh in on whether the
 19 payment structure impacts the witnesses' credibility, because the Rule 44.1 standard does
 20 not require such an inquiry. Thus, Plaintiffs argument that the payment structure "calls
 21 into question the reliability" of Yanaga and Iida's declarations, even if correct, does not
 22 mandate their exclusion under Rule 44.1. The reliability of Iida's declaration is further
 23 discussed *infra* section III.C.

24 **B. Yanaga's Credibility and Relevance**

25 Regarding Yanaga specifically, Plaintiffs first argue that Yanaga's testimony
 26 should be excluded because Yanaga plagiarized part of one of the textbooks that was
 27 included in the list of publications affixed to Yanaga's declaration. Yanaga's publisher

1 received a copyright infringement claim for pages 866 to 872 of the JFIEA penalties
 2 section of the textbook in question. The publisher suspended sale of the textbook and
 3 apologized “for causing some parts [of the book] to infringe on someone else’s
 4 copyright.” Exhibit 7 to Radcliffe Declaration. Defendants argue that the “copyright issue
 5 was unintentional” and supply a new declaration of Yanaga explaining the
 6 circumstances of the violation. Opp. At 7; Yanaga Declaration of October 13, 2022 at ¶4.

7 The court declines to weigh in on whether Yanaga willfully plagiarized seven
 8 pages of the textbook in question. The purportedly infringed pages do not factor into
 9 Yanaga’s declaration except for their inclusion in his list of publications. Even if Yanaga’s
 10 credibility was diminished by the copyright issue, the court would still be entitled to
 11 refer to his declaration to aid its determination of foreign law.

12 Plaintiffs next argue that Yanaga’s opinion does not address the legal question the
 13 Court granted leave to be addressed judgment. Rule 44.1 does not require so narrow a
 14 tailoring; it only requires that Yanaga’s opinion “may aid” the Court in determining
 15 foreign law. Fed. R. Civ. P. 44.1. Thus, Yanaga’s opinion is relevant and the court need
 16 not exclude it.

17 C. Iida’s Reliability

18 Plaintiffs argue that Iida’s opinion lacks proper support and is unreliable, because
 19 (1) it is based on Iida’s subjective interpretation; (2) it contains a misstatement about the
 20 Book-Entry Transfer Institution; (3) it does not utilize a relevant Japanese Supreme Court
 21 case (*Livedoor*); (4) it is based on the assumption of a validly existing trust; (5) it
 22 improperly opines on ultimate facts; and. Although the first four issues may affect the
 23 weight to which the Court afford Iida’s conclusions on certain matters, none of them
 24 discredit him so thoroughly as to “run afoul of Rule 44.1.” As to its opinion on ultimate
 25 facts, that limitation does not apply to Rule 44.1 evidence, which does not need to pass
 26 through the standards of Federal Rule of Evidence 702. Thus, the court need not exclude
 27 Iida’s opinion.

1 **IV. CONCLUSION**

2 For the reasons stated above, Plaintiffs' Motion to Exclude is DENIED.

3 **IT IS SO ORDERED.**

5 Dated: November 17, 2022



7 DEAN D. PREGERSON

8 UNITED STATES DISTRICT JUDGE

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